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and Active8media, LLC

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ADVANCE MAGAZINE PUBLISHERS INC.
d/b/a THE CONDÉ NAST PUBLICATIONS,

Plaintiff,

V.

ACTIV8NOW, LLC and ACTIVE8MEDIA, LLC,

Defendants, :
Counterclaimants Activ8now :
and Active8media, :

V.

ADVANCE PUBLICATIONS, INC.
and RICHFX, INC.,

Third Party Defendants.

[illegible]

CIVIL ACTION NO.:
1:05-cv-07516-(KMK)(DFE)
ELECTRONICALLY FILED

REPLY TO ADVANCE
MAGAZINE PUBLISHERS INC.
d/b/a THE CONDÉ NAST
PUBLICATIONS'
COUNTERCLAIMS

**ACTIV8NOW, LLC AND ACTIVE8MEDIA, LLC'S REPLY TO
ADVANCE MAGAZINE PUBLISHERS INC. d/b/a THE CONDÉ
NAST PUBLICATIONS COUNTERCLAIMS**

COME NOW Defendants and Counterclaimants Activ8now, LLC ("Activ8now") and Active8media, LLC ("Active8media") and reply to Advance Magazine Publishers Inc. d/b/a/ The Condé Nast Publications ("Condé Nast") Counterclaims as follows:

First Condé Nast Counterclaim

133. Activ8now and Active8media admit that jurisdiction and venue are proper in this Court. Except as thus admitted, the averments of Paragraph 133 are denied and Activ8now and Active8media specifically deny that there exists an actual controversy as to the validity of the Asserted Patents.

134. Denied.

135. Denied.

136. Denied.

137. Activ8now and Active8media deny each and every allegation, prayer, matter, fact or thing averred in the Counterclaims not expressly admitted herein.

WHEREFORE, Activ8now and Active8media pray as follows:

- A. That judgment on Condé Nast's Counterclaims be rendered for Activ8now and Active8media and against Condé Nast;
- B. That judgment be entered in favor of Activ8now and Active8media and against Condé Nast and the Counterclaim Defendants Advance Publications, Inc. and RichFX, Inc. (collectively the "Counterclaim Defendants") on Activ8now and Active8media's Counterclaims;

- C. That Activ8now and Active8media receive a trial by jury on all issues triable to a jury;
- D. An award of damages in an amount to be proven at trial;
- E. An award of treble damages pursuant to 35 U.S.C. § 284;
- F. An award of Activ8now's and Active8media's attorney fees pursuant to 35 U.S.C. § 285;
- G. An award of exemplary damages pursuant to O.C.G.A. § 10-1-763(b);
- H. An award of Activ8now's and Active8media's attorney fees in accordance with O.C.G.A. § 10-1-764;
- I. A constructive trust on the various assets of Condé Nast and the Counterclaim Defendants;
- J. An equitable lien on the various assets of Condé Nast and the Counterclaim Defendants;
- K. Restitution from Condé Nast and the Counterclaim Defendants in an amount to be proven at trial;
- L. A full and complete accounting of Condé Nast and the Counterclaim Defendants;
- M. A temporary, interlocutory, and permanent injunction to stop the various tortious and illegal acts of Condé Nast and the Counterclaim Defendants;
- N. A temporary, interlocutory, and permanent injunction to enjoin Condé Nast and the Counterclaim Defendants from further acts of patent infringement in accordance with 35 U.S.C. § 283;
- O. A temporary, interlocutory, and permanent injunction to enjoin Condé Nast and the Counterclaim Defendants from further disclosing, divulging or publishing to

others or using in any manner Activ8now and Active8media's trade secrets and from further violating the Georgia Trade Secrets Act in accordance with O.C.G.A. § 10-1-762(a);

- P. A temporary, interlocutory, and permanent injunction requiring Condé Nast and the Counterclaim Defendants to pay a reasonable royalty for any future use of Activ8now's and Active8media's trade secrets if the Court should determine that it would be unreasonable to prohibit future use pursuant to O.C.G.A. § 10-1-762(b);
- Q. A temporary, interlocutory, and permanent injunction requiring Condé Nast and the Counterclaim Defendants to protect Activ8now's and Active8media's trade secrets pursuant to O.C.G.A. § 10-1-762(c);
- R. A declaration that neither Activ8now nor Active8media have engaged in trademark infringement;
- S. A declaration that neither Activ8now nor Active8media have unfairly competed with Condé Nast;
- T. An award of punitive damages in accordance with O.C.G.A. § 51-12-5.1 in an amount to be proven at trial;
- U. An award of Activ8now's and Active8media's attorney fees and cost of investigation and litigation in accordance with O.C.G.A. § 13-6-11 in an amount to be proven at trial;
- V. An award of Activ8now's and Active8media's attorney fees and cost of investigation and litigation;
- W. An award of pre-judgment and post-judgment interest; and

X. Any and all other relief which the Court deems just and proper.

Dated: December 20, 2005
New York, New York

/s/ Paul R. Niehaus

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Attorneys for Activ8now, LLC and
Active8media, LLC

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the within and foregoing Activ8now, LLC and Active8media, LLC's Reply to Advance Magazine Publishers Inc. d/b/a The Condé Nast Publications' Counterclaims with the Clerk of the Court using the CM/ECF system which will send electronic notice of such filing to:

Randy Lipsitz, Esq. (RL-1526)
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Publications, Inc.*

I have further served a copy of the within and foregoing by Federal Express and electronic mail on:

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Attorneys for Third Party Defendant RichFX, Inc.

This 20th day of December, 2005.

/s/ Paul R. Niehaus
Paul R. Niehaus